UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/NGO/45
17 August 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-seventh session
Agenda item 8

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement submitted by Habitat International Coalition, a non-governmental organization in consultative status (category II) and Foodfirst Information and Action Network (FIAN), a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social resolution 1296 (XLIV).

[16 August 1995]

An optional protocol to the International Covenant on Economic, Social and Cultural Rights

1. Thirty years after the adoption of the International Covenant on Economic, Social and Cultural Rights in 1966, and 20 years after it entered into force in 1976, the time has come to agree on an optional protocol to the Covenant which will provide for an individual complaint procedure.

2. The agreement reached in the final document of the World Conference on Human Rights in Vienna in 1993 emphasizes that all human rights are indivisible and interrelated and that they should be implemented with the same intensity. It follows that an optional protocol is a necessary tool for the concrete implementation of economic, social and cultural rights.

3. The Committee on Economic, Social and Cultural Rights has been asked to report to the Commission on Human Rights in 1996 about the status of preparation of an optional protocol.

4. The experiences of FIAN - the international human rights organization for the right to feed oneself - and of Habitat International Coalition (HIC) - the international NGO coalition for housing rights - show the necessity of an individual complaint procedure.

5. An optional protocol is necessary because:

(a) The current mechanisms of monitoring States' compliance with the Covenant are insufficient, particularly because it is impossible to investigate concrete cases of violations of the rights contained in the Covenant;

(b) Concrete disputes will be raised and investigation of individual situations will allow for deeper analysis of States' obligations and of legal provisions of the Covenant that otherwise could not be achieved;

(c) A more precise analysis of States' obligations will lead to a better understanding of the rights contained in the Covenant, and this will improve understanding of how these rights can be implemented through national legislation and administrative practices;

(d) The possibility of a detailed legal interpretation of the rights will strengthen recognition of economic, social and cultural human rights at the international level generally. This process will improve respect for and protection and fulfilment of these rights for everyone;

(e) The adoption of an optional protocol is a step - long overdue - to put an end to the uneven treatment that economic, social and cultural human rights have enjoyed in the United Nations system in terms of their protection and implementation;

(f) Individuals and groups will be encouraged to formulate their complaints more precisely and to work towards the realization of their human rights.

6. In its work for the right to adequate food and housing FIAN and HIC constantly experience the interrelatedness of the human rights to food, shelter, health and healthy and fair working conditions, to work, to organize collectively, to freedom of expression and cultural identity. Most frequently, in situations of human rights violations several rights are violated and the violation of or non-compliance with one right often impedes the fulfilment of other rights.

7. The experiences of FIAN and HIC show that the realization of the individual right to feed oneself essentially depends on access to available resources. The access to necessary resources on a household level cannot be verified on an individual basis only, but must be seen in the context of the access to resources for the whole family or a group. Individual and collective rights are linked in the defence of the right to feed oneself (and other rights) particularly for indigenous communities and pastoralists. With respect to healthy and fair working conditions, violations of minimum provisions are also often relevant for larger groups.

8. Future threat to or violations of human rights of affected people can often be detected early in the planning process of policy measures or projects. Particularly in large development projects - e.g. supported by the World Bank - adequate rehabilitation and resettlement have not been dealt with satisfactorily, and this can lead to forced evictions and violations of several economic, social and cultural human rights.

9. Therefore, FIAN and HIC demand that:

(a) An optional protocol to the International Covenant on Economic, Social and Cultural Rights should cover all rights contained in the Covenant. A distinction between more important or less important rights is contrary to FIAN's experiences, as well as contrary to the spirit of the Covenant itself and the International Bill of Rights as a whole. Every right contained in the Covenant carries States' obligations, including the obligation to respect and protect these rights, two dimensions which can be transferred directly into national legislation and jurisdiction. Every procedure of ratification which would allow States to limit the acceptance of individual complaint procedures to some of the rights in the Covenant disregards the interrelatedness of all human rights. Therefore, instead of a strengthening of the rights of the Covenant such procedures would weaken all rights. The Vienna Declaration and Programme of Action stated: "All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis" (part I, para. 5);

(b) Any complaint procedure should be open to petitions from individuals, from victim groups, and from supporting non-governmental organizations;

(c) The complaint procedure should be open for petitions related to ongoing policy measures or projects (financed with national or international funds), whose realization will or can cause violations of the rights contained in the Covenant. While these complaints are pending the individual or groups that file the complaint should have legal protection and a moratorium for the relevant policy measure or project should be declared until the final decision about the complaint is taken.